IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 400 of 2005
With
CRIMINAL MISC.APPLICATION No. 11033 of 2005
In
SPECIAL CRIMINAL APPLICATION No. 400 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

YASIN YUSUF RANGREJ - Applicant(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR HR PRAJAPATI for Applicant(s) : 1,
MR MUKESH PATEL, APP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 11/10/2005

ORAL JUDGMENT

1.The petitioner has filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the FIR registered as C.R. No. II 129/2004 with Jalalpor Police Station.

2.This Court has issued notice for final disposal on 01.04.2005. During the pendency of this petition, the petitioner has moved Cri. Misc. Application No. 11033 of 2005 praying for stay against the further proceedings pending in the Court of Chief Judicial Magistrate, Navsari.

3.Mr. H.R. Prajapati, learned advocate appearing for the petitioner has submitted that the complaint was lodged being C.R. No. II 129/2004 with Jalalpor Police Station for the offences

punishable under Section 3 & 7 of the Essential Commodities Act and Sections 285, 337 and 338 of Indian Penal Code. He has further submitted that the entire investigation was conducted by the Police-Sub-Inspector, Jalalpor Police Station who has no authority in the eye of law to carry out search and seizure as well as further investigation. He has further submitted that Clause 4 of Naptha (Acquisition, sale, storage and Prevention of use in Automobiles) order, 2000 provides that the power of search and seizure is to be exercised by any Gazetted Officer of the Central or the State Government or any Police Officer not below the rank of Dy.S.P. This issue has been dealt with by this Court in Cri. Misc. Application No. 5317 of 2002 with Cri. Misc. Application No. 3566 of 2002 and Cri. Misc. Application No. 4646 of 2002 wherein this Court has taken the view that the offence punishable

under the Naptha (Acquisition, sale, storage and Prevention of use in Automobiles) order, 2000 and related IPC offences and the investigation pursuant thereto were ordered to be quashed and set aside. He has further submitted that in the present case, in the FIR as well as in the Charge-sheet itself, it was mentioned that the complaint was filed and investigation was carried out by the respondent No. 2 i.e. P.S.I. and the charges were leveled under Sections 3 & 7 of the Essential Commodities Act. He has further submitted that since the FIR was filed and investigation was carried out by the below ranked Officer instead of Dy.S.P., the same is absolutely illegal and unautorised and hence, the entire complaint is required to be quashed and set aside.

4.Mr. Mukesh A. Patel, learned Assistant Public Prosecutor appearing for the respondents has

submitted that the FIR was filed not only for the offences punishable under Essential Commodities Act but it was also filed for the offences punishable under Indian Penal Code and since this being composite FIR, the order relied upon by the learned advocate for the petitioner is not applicable to the facts of the present case and the FIR cannot be quashed on that ground. However, it is open for the petitioner to move the Trial Court by filing appropriate application for deleting the charge which has been framed against the petitioner in so far as it relates to the offences punishable under the Essential Commodities Act. He has, therefore, submitted that the Court should not quash and set aside the complaint.

5.After having heard learned advocate appearing for the petitioner and the learned Assistant Public Prosecutor for the respondents, the

Court is of the view that so far as framing of the charge under Essential Commodities Act is concerned, the legal proposition is well settled and the provisions contained in the Act are very clear. The inquiry and investigation must be carried out by the person not below the rank of D.S.P. Here admittedly in the present case, the investigation is carried out by P.S.I. and hence, the same is not in accordance with the provisions of law. The charge, therefore, framed against the petitioner for the offences punishable under Sections 3 & 7 of the Essential Commodities Act are not in accordance with law and hence, the same is deleted. However, it is open for the prosecution to prosecute the petitioner for the offences punishable under Sections 285, 337 and 338 of Indian Penal Code.

6.In the above view of the matter, this petition

is partly allowed. Rule is made absolute to the above extent. There shall be no order as to costs.

7.In view of the order passed in main petition, Cri. Misc. Application No. 11033 of 2005 does not survive and it is accordingly disposed of.

[K.A. PUJ, J.]

Savariya